

Before the  
Federal Communications Commission  
Washington, D.C. 20554

DEC 15 2 23 PM '05

In the Matter of )

)  
Amendment of Section 73.606(b),  
Table of Allotments,  
Television Broadcast Stations.  
(Gainesville, Florida)

)  
)  
MB Docket No. 04-31  
RM-10852

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: December 2, 2004**

**Released: December 14, 2004**

By the Chief, Video Division:

1. At the request of Gainesville Channel 61 Associates, LLC ("GCA")<sup>1</sup>, the Commission has before it the Notice of Proposed Rule Making, 19 FCC Rcd 2666 (2004), proposing the substitution of channel 29 for channel 61+ at Gainesville. GCA, Post-Newsweek Stations Orland, Inc. ("Post-Newsweek"), licensee of WKMG-TV, Orlando, Florida and translator station W29AB, Ocala, Florida; and Tampa Bay Television, Inc. ("Tampa Bay"), licensee of WFTS-DT, Tampa, Florida and GCA filed comments.<sup>2</sup> GCA filed reply comments.

2. Post-Newsweek, licensee of WKMG-TV, channel 6, Orlando, Florida, opposes GCA's channel substitution proposal arguing that it would displaced translator station W29AB, Ocala, Florida. It states that station W29AB has been serving Marion County for more than twenty years, providing the county with CBS network programming, daily local news and public affairs programming. Post-Newsweek concludes that the Commission should dismiss the rulemaking until after the DTV channel election process is complete, arguing that new spectrum will become available to help such applicants as GCA to find channel allotments that will not displace existing service.

3. In its comments, GCA states that W29AB is a secondary service and must yield to any changes in the TV Table of Allocations that preclude its continued operation. GCA argues that the addition of a new full-power station to the Gainesville market will increase programming diversity,

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<sup>1</sup> KB Prime Media LLC and Television Capital Corporation of Gainesville were originally the two competing applicants for channel 61 at Gainesville. Subsequently, KB Prime agreed to dismiss its application and join Television Capital Corporation to become 50% owners of GCA. The parties filed a Joint Request for Approval of Settlement Agreement with the Commission on January 30, 1998.

<sup>2</sup> Tampa Bay Television is the licensee of WFTS-DT, channel 29, Tampa, Florida. Tampa Bay states that the Commission should establish channel 29's antenna pattern and ERP as part of the allotment in order to establish a baseline to accommodate future maximization studies by other stations. We need not address Tampa Bay's request further since the instant proposal sets forth specific parameters of 3600 kW and uses a directional pattern. Future applicants are obligated only to protect these facilities.

while W29AB merely rebroadcasts existing programming. GCA also notes that the Commission has afforded new NTSC stations without a paired DTV channel the opportunity to either begin operating digitally immediately or to "flash-cut" to digital operations at some point in the future. As a result, it argues, a new NTSC station, such as that proposed by GCA could provide immediate service to the public in either analog or digital, while preserving W29AB's operation does nothing to further the DTV transition.

4. We believe the public interest would be served by substituting channel 29 for channel 61+ since it enables GCA to relocate to a lower channel as required by the Commission *Reallocation Order*.<sup>3</sup> In reaching this conclusion, we find that Post-Newsweek's suggestion to delay GCA move to preserve W29AB on channel 29 in Ocala, Florida, is without merit. It is well established that TV translators are considered secondary services and are not entitled to protection from the initiation of a full power facility.<sup>4</sup>

5. A staff engineering analysis indicates that channel 29 can be substituted for channel 61+ at Gainesville with a zero offset consistent with the minimum distance separation requirements of Sections 73.610 and 73.698 of the Commission Rules. The coordinates for channel 29 at Gainesville are North Latitude 29-37-47 and West Longitude 82-34-24.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 28, 2005, the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Gainesville, Florida	*5, 20, 29

7. IT IS FURTHER ORDERED, That within 45 days of the effective date of this Order, Gainesville Channel 61 Associates, LLC shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying TV Channel 29 in lieu of TV Channel 61+.

<sup>3</sup> On January 6, 1998, the Commission issued a *Report and Order* in ET Docket No. 97-157 wherein it reallocated the 746-806 MHz band (television channels 60-69) for public safety use and commercial fixed, mobile and broadcasting services. See *Reallocation of Television Channels 60-69, the 746-806 MHz Band, Report and Order*, 12 FCC Rcd 22953 (1998) ("*Reallocation Order*"). Subsequently, the Commission issued a Public Notice ("*Public Notice*"), released on November 22, 1999, DA 99-2605, announcing a window filing opportunity to allow for, among other things, applicants for new NTSC stations on channel 60 through 69 to modify their proposals to specify a channel below channel 60. GCA availed itself of this opportunity by filing a petition for rulemaking seeking an acceptable channel below channel 60.

<sup>4</sup> See Section 74.702(b) of the Commission Rules.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Pam Blumenthal, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau